

Congress and U.S. Policy on North Korean Human Rights and Refugees: Recent Legislation and Implementation

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Summary

As the incoming Obama Administration conducts a review of U.S. policy toward North Korea, addressing the issue of human rights and refugees remains a priority for many members of Congress. The passage of the reauthorization of the North Korean Human Rights Act in October 2008 (P.L. 110-346) reasserted congressional interest in influencing executive branch policy toward North Korea. In addition to reauthorizing funding at original levels, the bill expresses congressional criticism of the implementation of the original 2004 law and adjusts some of the provisions relating to the Special Envoy on Human Rights in North Korea and the U.S. resettlement of North Korean refugees. Some outside analysts have pointed to the challenges of highlighting North Korea's human rights violations in the midst of the ongoing nuclear negotiations, as well as the difficulty in effectively reaching North Korean refugees as outlined in the law. Further, the law may complicate coordination on North Korea with China and South Korea. At this point, it remains unclear what focus the Obama Administration will place on human rights and refugees as it takes over the nuclear negotiations. For more information, please see CRS Report RL34189, *North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options*, coordinated by Rhoda Margesson.

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Introduction

North Korea's systematic violation of its citizens' human rights and the plight of North Koreans trying to escape their country have been well documented in multiple reports issued by governments and other international bodies. The Bush Administration initially highlighted and later de-emphasized Pyongyang's human rights record as its policy on nuclear weapons negotiations evolved. Congress has consistently drawn attention to North Korean human rights violations on a bipartisan basis. On several occasions, Congress has criticized the executive branch for its approach to these issues, through tough questioning of Administration witnesses during multiple hearings and through written letters of protest to high-level officials. Although the Obama Administration has indicated that it will seek to continue the nuclear negotiations, it has not indicated how the issue of human rights will be addressed.

The passage of the North Korean Human Rights Act of 2004 (H.R. 4011; P.L. 108-333; and 22 U.S.C. 7801.) and its reauthorization in 2008 (H.R. 5834, P.L. 110-346) serve as the most prominent examples of legislative action on these issues. The legislation both reinforced some aspects of the Bush Administration's rhetoric on North Korea and expresses dissatisfaction with other elements of its policy on North Korea. The reauthorization bill explicitly criticizes the implementation of the original law and reasserts Congressional interest in adopting human rights as a major priority in U.S. policy toward North Korea.

U.S. attention to North Korean human rights and refugees is complicated by the geopolitical sensitivities of East Asia. China is wary of U.S. involvement in the issue and chafes at any criticism based on human rights. South Korea also had reservations about a more active U.S. role, particularly in terms of refugees, although the current Lee administration in Seoul has been more amenable to such efforts. Both want to avoid a massive outflow of refugees, which they believe could trigger instability or the collapse of North Korea. U.S. executive branch officials worry that criticism of how Seoul and Beijing approach North Korea's human rights violations could disrupt the multilateral negotiations to deal with Pyongyang's nuclear weapons programs. North Korean refugees seeking resettlement often transit through other Asian countries, raising diplomatic, refugee, and security concerns for those governments.

The Role of Human Rights in U.S. Policy Toward North Korea under the Bush Administration

In the first several years of the Bush Administration, high-level officials, including the President and Secretary of State, publicly and forcefully criticized the regime in Pyongyang for its human rights practices. As efforts to push forward the Six-Party talks accelerated in 2007, the Administration did not propose any negotiations with North Korea over human rights but asserted that human rights is one of several issues to be settled with North Korea after the nuclear issue is resolved. The Six-Party Agreement of February 13, 2007, calls for the United States and North Korea to "start bilateral talks aimed at resolving bilateral issues and moving toward full diplomatic relations." Prior to the Agreement in 2007, the Bush Administration held that it would not agree to normalization of diplomatic relations with North Korea until there was progress on human rights (presumably including refugees) and other issues. However, after the signing of the agreement in February 2007, some observers say that former Assistant Secretary of State for East Asian and Pacific Affairs Christopher Hill focused exclusively on a satisfactory settlement of the nuclear issue.

The North Korean Human Rights Act of 2004

The 108th Congress passed by voice vote, and President Bush signed, the North Korean Human Rights Act of 2004 (NKHRA). The legislation

- authorized up to \$20 million for each of the fiscal years 2005-2008 for assistance to North Korean refugees, \$2 million for promoting human rights and democracy in North Korea and \$2 million to promote freedom of information inside North Korea;
- asserted that North Koreans are eligible for U.S. refugee status and instructs the State Department to facilitate the submission of applications by North Koreans seeking protection as refugees; and
- required the President to appoint a Special Envoy to promote human rights in North Korea.

The act also expressed the sense of Congress that human rights should remain a key element in negotiations with North Korea; all humanitarian aid to North Korea shall be conditional upon improved monitoring of the distribution of food; support for radio broadcasting into North Korea should be enhanced; and that China is obligated to provide the United Nations High Commissioner for Refugees (UNHCR) with unimpeded access to North Koreans inside China.

Some hail the NKHRA as an important message that human rights will play a central role in the formulation of U.S. policy towards North Korea. Passage of the legislation was driven by the argument that the United States has a moral responsibility to stand up for human rights for those suffering under repressive regimes. Advocates claim that, in addition to alleviating a major humanitarian crisis, the NKHRA will ultimately enhance stability in Northeast Asia by promoting international cooperation to deal with the problem of North Korean refugees. Critics say the legislation risks upsetting relations with South Korea and China, and ultimately the diplomatic unity necessary to make North Korea abandon its nuclear weapons program through the Six-Party Talks. Further, they insist that the legislation actually worsens the plight of North Korean refugees by drawing more attention to them, leading to crackdowns by both North Korean and Chinese authorities and reduced assistance by Southeast Asian countries concerned about offending Pyongyang.

Selected Implementation Progress

While the passage of the NKHRA raised the profile of congressional interest in North Korean human rights and refugee issues, many of the activities had existing authorizations already in place. The State Department had programs directed toward raising awareness of North Korean human rights issues as well as providing some assistance to vulnerable North Korean refugees through other organizations. Korean-language broadcasting by Radio Free Asia (RFA) and Voice of American (VOA) pre-dated the passage of the law. However, some activities appear to have been enhanced as a result of the law's enactment, particularly the admission of North Korean refugees for resettlement in the United States.

Human Rights

Reports required by the act have outlined steps taken by the State Department and other executive branch bodies to promote human rights in North Korea. The State Department has not requested funding explicitly under the NKHRA, but officials assert that the mission of the NKHRA is

fulfilled under a number of existing programs. For democracy promotion in North Korea, the State Department's Democracy, Human Rights, and Labor (DRL) Bureau gives grants to U.S.-based organizations: in the FY2008 budget, DRL requested \$1 million for North Korea human rights programs, as well as \$1 million for media freedom programs. DRL also considers several other programs, such as those under the National Endowment of Democracy account specific to North Korea, as fulfilling part of the NKHRA's mission. The Special Envoy attended three international Freedom House conferences organized to raise awareness of human rights conditions in North Korea in 2005-2006. The U.S. government has also sponsored and supported United Nations resolutions condemning North Korea's human rights abuses.

Refugee Resettlement

The NKHRA appears to have had the greatest impact in the area of refugee admissions. As of January 2009, the United States had accepted 71 North Korean refugees for resettlement from undisclosed transit states. The first refugees—four women and two men—were accepted in May 2006. The State Department's Population, Refugees, and Migration (PRM) Bureau annually provides funds for UNHCR's annual regional budget for East Asia, which includes assistance for North Korean refugees, among other refugee populations. PRM funds international organizations such as UNHCR and the International Committee for the Red Cross.

Radio Broadcasting into North Korea

The NKHRA calls on the Broadcasting Board of Governors (BBG) to "facilitate the unhindered dissemination of information in North Korea" by increasing the amount of Korean-language broadcasts by RFA and VOA. (A much more modest amount has been appropriated to support independent radio broadcasters.) The hours of radio broadcasts into North Korea, through medium- and short-wave, were modestly increased beginning in 2006, and original programming was added in 2007. The BBG currently broadcasts to North Korea ten hours per day: RFA broadcasts three and one-half hours of original programming and one and one-half hours of repeat programming, and VOA broadcasts four hours of original and one hour of repeat programming with news updates each day. In FY2008, the BBG's budget request included \$8.1 million to implement the 10-hour broadcast schedule, and the FY2009 request includes \$8.5 million to maintain this schedule.

Content includes news briefs, particularly news involving the Korean peninsula, interviews with North Korean defectors, and international commentary on events happening inside North Korea. The BBG cites an InterMedia survey of escaped defectors that indicates that North Koreans have some access to radios, many of them altered to receive international broadcasts.¹ The BBG continues to explore ways to expand medium wave broadcast capability into North Korea. VOA is broadcast from BBG-owned stations in Tinian, Thailand, and the Philippines, and from leased stations in Russia and Mongolia. RFA is broadcast from stations in Tinian and Saipan and leased stations in Russia and Mongolia.

Reauthorization Bill

The reauthorization bill renews funding that expired in FY2008, reasserts key tenets of the legislation, and criticizes the pace of the executive branch implementation of the original law. It also cites the small number of resettlements of North Korean refugees and the slow processing of

¹ Broadcasting Board of Governors, Executive Summary of *Fiscal Year 2008 Budget Request*.

such refugees overseas. Funding is reauthorized through 2012 at the original levels of \$2 million annually to support human rights and democracy programs, \$2 million annually to promote freedom of information to North Koreans, and \$20 million annually to assist North Korean refugees. It also requires additional reporting—portions of which can be classified as necessary—on U.S. efforts to process North Korean refugees, along with reporting from the Broadcasting Board of Governors on progress toward achieving 12 hours per day of broadcasting Korean language programming.

Focus on Special Envoy

The role and activities of the Special Envoy for Human Rights in North Korea (per the reauthorization bill, now the “Special Envoy for North Korean Human Rights Issues”) have garnered particular attention from Congress. Jay Lefkowitz, appointed as the Special Envoy by President Bush nearly five months after the law was enacted in August 2005, was criticized for accepting the job as a part-time position while maintaining his legal career in New York. The reauthorization bill stipulates that the Special Envoy be an ambassador-level position—which requires confirmation by the Senate—and expresses the sense of Congress that the position should be full-time. Whereas the original legislation was vague on whether the refugee-specific provisions fell under the Envoy’s responsibilities, the reauthorization bill includes the sense of Congress that the Envoy should “participate in policy planning and implementation” on North Korean refugee issues. The Obama Administration has not yet selected its Special Envoy.

Lefkowitz’s role varied in its public profile: at times he was an active and vocal advocate for human rights issues, and at other times he faded from public view. He attended international conferences dedicated to raising awareness of human rights abuses in North Korea and testified at multiple congressional hearings. As the Korean-U.S. Free Trade Agreement was negotiated, he raised questions about labor practices at the Kaesong complex, an industrial park located in North Korea in which a consortium of South Korean firms employ North Korean labor.² Lefkowitz’s visibility declined particularly in 2007 as the Bush Administration renewed its effort on nuclear negotiations.

His statements occasionally sparked controversy: in January 2008, he gave a speech at a Washington think tank in which he criticized the denuclearization talks and voiced doubt that North Korea would ever give up its nuclear weapons. In response, then-Secretary of State Condoleezza Rice said, “Jay Lefkowitz has nothing to do with the Six-Party Talks ... he certainly has no say in what American policy will be in the Six-Party Talks.”³ In his final report to Congress in January 2009, Lefkowitz criticized some aspects of U.S. handling of refugee admissions and critiqued the North Korean policies of the South Korean, Chinese, and Japanese governments.⁴

² For more information, see CRS Report RL34093, *The Kaesong North-South Korean Industrial Complex*, by Dick K. Nanto and Mark E. Manyin.

³ “Diplomats Who Stray from Official US policy Cause Headaches for Rice and State Department,” *Associated Press*, February 1, 2008.

⁴ For full copy of the report, go to <http://www.state.gov/g/senk>.

Complications with Refugee Provisions

Implementation Challenges

Some observers contend that good-faith implementation of NKHRA's refugee provisions may be counterproductive. They argue that the legislation on North Korean refugee admissions could send a dangerous message to North Koreans that admission to the United States as a refugee is assured, encouraging incursions into U.S. diplomatic missions overseas. State Department officials say that given the tight security in place at U.S. facilities abroad, unexpected stormings could result in injury or death for the refugees. Secondly, granting of asylum status to North Korean refugees involves a complex vetting process that is further complicated by the fact that the applicants originate from a state with which the United States does not have official relations. In congressional hearings, State Department officials have cautioned that effective implementation of the NKHRA depends on close coordination with South Korea, particularly in developing mechanisms to vet potential refugees given the dearth of information available to U.S. immigration officials on North Koreans.⁵

Funding Concerns

Some government officials and NGO staff familiar with providing assistance to North Korean refugees say that funding explicitly associated with the NKHRA is problematic because of the need for discretion in reaching the vulnerable population. Refugees are often hiding from authorities, and regional governments do not wish to draw attention to their role in transferring North Koreans, so funding is labeled under more general assistance programs. In addition, many of the NGOs that help refugees do not have the capacity to absorb large amounts of funding effectively because of their small, grass roots nature.

A Ready Alternative for Resettlement

South Korea remains the primary destination for North Korean refugees. In addition to automatically granting South Korean citizenship, the South Korean government administers a resettlement program and provides cash and training for all defectors. According to press reports, over 14,000 defectors from North Korea have resettled in the South since the conclusion of the Korean War in 1953, including over 2,500 in 2007 alone.⁶ The South Korean system of accepting refugees is faster and more streamlined than the U.S. process.

Changes in South Korea's Approach?

As part of its policy of increasing economic integration and fostering better ties with North Korea, South Korea until recently refrained from criticizing Pyongyang's human rights record and downplayed its practice of accepting North Korean refugees. Lee Myung-bak's election as South Korea's president in December 2007, however, appeared to usher in a new approach: Lee's administration has tied assistance from the South to North Korean progress on denuclearization and openly criticized North Korea's human rights situation. In years past, South Korea had

⁵ Transcript of April 28, 2005 joint hearing of the Subcommittee on Asia and the Pacific and the Subcommittee on Africa, Global Human Rights, and International Operations entitled, "The North Korean Human Rights Act: Issues and Implementation," accessed at <http://www.foreignaffairs.house.gov/archives/109/20919.pdf>.

⁶ "North Korea Newsletter No. 19," *Yonhap English News*. September 4, 2008.

usually abstained from voting on United Nations resolutions calling for improvement in North Korea's human rights practices. At the U.N. Human Rights Council meeting in March 2008, however, South Korea voted for a similar resolution. Lee has also conditioned fertilizer and food aid on improved access to the North's distribution systems to ensure that such aid is not going only to Pyongyang's elite and military. This approach has contributed to a considerable chill in North-South relations since Lee took office. A joint statement from President Bush and President Lee in August 2008 urged progress in improving North Korea's human rights, the first time such a mention appeared.

Author Information

Emma Chanlett-Avery
Specialist in Asian Affairs

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